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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5281

DATE COMPLAINT FILED: 07/01/02

DATE OF NOTIFICATION: 07/05/02

DATE ACTIVATED: 11/21/02

EXPIRATION OF SOL: 06/13/07

COMPLAINANT: John J. Vecchione

RESPONDENTS: American Muslim Council
Palestine Media Watch
www.pmwatch.org
www.voteHilliard.org
Hilliard for Congress Campaign
and Elvira W. Williams, as treasurer

RELEVANT STATUTES AND REGULATIONS: 2 U.S.C. § 441b(a)
2 U.S.C. § 441b(b)(2)(A)
2 U.S.C. § 441d(a)(3)
2 U.S.C. § 434(c)
11 C.F.R. § 110.11
11 C.F.R. § 114.1
11 C.F.R. § 114.3

INTERNAL REPORTS CHECKED: Disclosure Reports
Contributor Indices

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

Complainant alleged that the American Muslim Council ("AMC") violated 2 U.S.C. § 441b by making corporate contributions or expenditures during the 2002 primary runoff election in Alabama's 7th Congressional District, in the form of express advocacy communications or solicitations to the general public on behalf of the Hilliard for Congress Campaign ("Hilliard committee"). Complainant further alleged that Palestine Media Watch

1 ("PMW") violated 2 U.S.C. §§ 441b, 441d and 434(c) by making corporate contributions or
2 expenditures through the establishment and operation of websites that contained express
3 advocacy communications or solicitations to the general public on behalf of the Hilliard
4 committee, and that PMW failed to include a disclaimer and to properly report the associated
5 costs. Based on the available information, this Office recommends that the Commission make
6 reason-to-believe findings against the American Muslim Council and Palestine Media Watch but
7 take no further action; send appropriate admonishments; find no reason to believe that the
8 Hilliard committee violated the Act; and close the file.

9 **II. FACTUAL AND LEGAL ANALYSIS**

10 **A. Applicable Law¹**

11 **1. Contribution Limits and Prohibitions**

12 Pursuant to the Federal Election Campaign Act of 1971, as amended ("the Act"), a
13 "contribution" is defined as "any gift, subscription, loan, advance, or deposit of money or
14 anything of value made by any person for the purpose of influencing any election for Federal
15 office." 2 U.S.C. § 431(8)(A)(i). Similarly, an "expenditure" is defined as "any purchase,
16 payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any
17 person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(9)(A)(i).
18 An "independent expenditure" means an expenditure by a person expressly advocating the
19 election or defeat of a clearly identified candidate which is made without cooperation or
20 consultation with any candidate, or any authorized committee or agent of such candidate, and

¹ All of the facts in this matter occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Act herein are as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA.

1 which is not made in concert with, or at the request or suggestion of, any candidate, or any
2 authorized committee or agent of such candidate. 2 U.S.C. § 431(17).² The Act defines
3 "person" as including an "individual, partnership, committee, association, corporation, labor
4 organization, or any other organization or group of persons, but such term does not include the
5 Federal Government or any authority of the Federal Government." 2 U.S.C. § 431(11).

6 The Act prohibits corporations from making contributions or expenditures in connection
7 with federal elections and prohibits any officer or director of any corporation from consenting to
8 any contribution or expenditure by the corporation. 2 U.S.C. § 441b(a). A candidate, political
9 committee, or any other person may not knowingly accept or receive any contribution prohibited
10 by 2 U.S.C. § 441b(a). *Id.* The general prohibition against corporate contributions and
11 expenditures contains an exception that permits a corporation, including an incorporated
12 membership organization, to communicate with its "restricted class" (its stockholders, executive
13 and administrative personnel, and their families), but not the general public, on "any subject,"
14 including messages containing express advocacy of the election or defeat of federal candidates.

² Pursuant to 11 C.F.R. § 100.22(a), "expressly advocating" means any communication that--

Uses phrases such as "vote for the President," "re-elect your Congressman," "support the Democratic nominee," "cast your ballot for the Republican challenger for U.S. Senate in Georgia," "Smith for Congress," "Bill McKay in '94," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Hickory," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Nixon's the One," "Carter '76," "Reagan/Bush" or "Mondale!"

In its Explanation and Justification ("E&J") for section 100.22, the Commission stated: "Please note that exhortations to contribute time or money to a candidate would also fall within the revised definition of express advocacy. The expressions enumerated in *Buckley* included 'support,' a term that encompasses a variety of activities beyond voting." 60 Fed. Reg. 35292, 35294 (July 6, 1995). See also *FEC v. Christian Coalition*, 52 F. Supp. 2d 45, 62 (D.D.C. 1999) ("as the *Buckley* Court recognized when it included the verb 'support' in its non-exclusive list . . . express advocacy also includes verbs that exhort one to campaign for, or contribute to, a clearly identified candidate").

2 U.S.C. § 441b(b)(2)(A); 11 C.F.R. §§ 114.1(a)(2)(i), 114.1(j) and 114.3(a). Corporate communications under section 114.3 of the regulations may solicit or suggest that the individual member make a contribution to a particular candidate so long as the corporation limits its activity to communication only and does not actually facilitate the making of the member's contribution to the candidate or act as conduit. AO 1997-22; 11 C.F.R. § 114.2(f). Pursuant to 11 C.F.R. § 114.1(j), for purposes of these communications, the restricted class of an incorporated membership organization includes its members, as defined in 11 C.F.R. § 114.1(e).

2. Disclaimer and Reporting Requirements

The Act provides that, whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, such communication must include a disclaimer. 2 U.S.C. § 441d(a). If the communication was not authorized by a candidate, an authorized committee of a candidate or an agent thereof, but paid for by other persons, the disclaimer "shall clearly state" the name of the person who paid for the communication and state that the communication was not authorized by any candidate or candidate's committee. 2 U.S.C. § 441d(a)(3). Under the law in effect at the time of the subject activity, the Commission viewed Internet communications as constituting general public political advertising for purposes of 2 U.S.C. § 441d, requiring disclaimers on all express advocacy communications or solicitations for contributions using the Internet. *See, e.g.*, AOs 1995-9, 1999-37.

Every person (other than a political committee) who makes independent expenditures in an aggregate amount or value in excess of \$250 during a calendar year shall disclose such information to the Commission under 2 U.S.C. § 434(c).

B. American Muslim Council³

1. Summary of Allegations and Response

The complaint, which identified AMC as a 501(c) organization incorporated under the laws of the District of Columbia, alleged that AMC violated the prohibition on corporate contributions or expenditures at 2 U.S.C. § 441b. According to the complaint, on or about June 13, 2002, AMC "utilized its corporate resources to make a communication to the general public expressly advocating Muslim Americans to support Congressman Earl F. Hilliard in his federal election campaign." AMC "not only utilized the services of its Executive Director, Eric Erfan Vickers[,] to solicit members of the general public, but also, on information and belief, utilized AMC computer equipment and servers to disseminate e-mail messages to the general public urging support for Congressman Hilliard."

The complaint includes a copy of an e-mail assertedly sent "to members of the general public, rather than limited to members of the AMC" The e-mail states at the top "AMC Media Dept." and the message contains the following header:

AMC ACTION ALERT!!
CONGRESSMAN HILLIARD NEEDS OUR URGENT SUPPORT
ELECTION: JUNE 25
To: Muslim Community of America
From: Eric Erfan Vickers, Executive Director

³ AMC's current status is unclear. Press reports indicate that AMC has merged with another group to form a new organization called the National American Muslim Federation. See, e.g., *Two U.S. Muslim Groups Plan to Join Forces*, DESERET NEWS, March 15, 2003. If the Commission approves the recommendations in this report, any such development will have little impact on this matter.

1 The first sentence of the e-mail states that Hilliard "needs the urgent financial support of
2 the Muslim community to maintain his seat in the U.S. House of Representatives," followed by
3 information about Hilliard and his positions on "issues dear to the Muslim community." The last
4 part of the e-mail includes "[c]ontact information to make a contribution to Congressman
5 Hilliard's campaign," listing the campaign's telephone and fax numbers, Alabama address and e-
6 mail address. The e-mail closes with the name "Eric Erfan Vickers, Executive Director,"
7 followed by the AMC's address, a plea to "Join AMC today . . . online" and a link to what
8 appears to be a secure member registration site.

9 The response stated that "AMC denies completely that it has violated" the Act "in
10 educating its members and the public about the positions taken by elected officials, such as
11 Congressman Hilliard, and issues, such as their support for Muslim causes, which affect their
12 elections." The response asserted that AMC has a "First Amendment right to advocate member
13 and public support for those who support Muslim issues," and contended that "[t]his is not
14 engaging in political endorsements. Rather, it is in keeping with the mission of AMC to
15 politically educate the Muslim community in order that the seven million Muslim American
16 citizens can effectively and meaningfully participate in America's political process."

17 2. Analysis

18 A Dun & Bradstreet search revealed that AMC was incorporated in the District of
19 Columbia in 1990 as a nonprofit corporation.⁴ AMC's website stated that AMC was established

⁴ Although certain nonprofit corporations may make independent expenditures, AMC has not claimed to be such a corporation. See 11 C.F.R. § 114.10.

1 “to increase the effective participation of American Muslims in the U.S. political and policy
2 arenas.” <www.amconline.org/knowamc>⁵.

3 The available information indicates that AMC made solicitation communications to
4 persons outside of its membership. The e-mail at issue is addressed to the “Muslim Community
5 in America” and urges the reader to join AMC, suggesting that it was sent to non-members. In
6 addition, AMC in its response appears to acknowledge that the communication reached the
7 general public by describing the activity as “educating its members *and the public*,” and
8 asserting its “right to advocate member *and public* support for those who support Muslim issues”
9 (emphasis added).

10 Because there do not appear to be any statutory or regulatory exceptions available to
11 AMC, the e-mail communication to non-members appears to have constituted a prohibited
12 corporate expenditure.⁶ See 2 U.S.C. § 441b. Further, AMC was required to state who paid for
13 the communication and that it was not authorized by any candidate or candidate’s committee.
14 See 2 U.S.C. § 441d(a)(3). Therefore, this Office recommends that the Commission find reason
15 to believe that the American Muslim Council violated 2 U.S.C. §§ 441b and 441d.

16 Although we are not aware of the number of e-mail recipients at this time, we recognize
17 that the cost of the communication, which would form the basis for a civil penalty, likely was
18 minimal. Accordingly, as a matter of prosecutorial discretion, this Office recommends that the
19 Commission take no further action against the American Muslim Council and send an

⁵ This Office last accessed AMC’s website in mid-2003. As of this writing, the website appears to be inaccessible.

⁶ Because there is no allegation or information suggesting that AMC coordinated its activity with the Hilliard committee, this Office has not analyzed the communication as an in-kind contribution. See *infra* discussion of Hilliard committee response.

1 admonishment letter.⁷ See MUR 5147 (Spartanburg Republicans) (Commission took no further
2 action against corporation that spent prohibited funds on an express advocacy radio
3 advertisement that failed to include a disclaimer, where the advertisement aired five times and
4 cost \$225); MUR 4957 (Buchanan) (Commission took no further action against political
5 committee that failed to include a disclaimer on an e-mail solicitation, where, *inter alia*, the cost
6 of the communication was likely minimal); and MUR 5048 (Nethercutt) (Commission approved
7 a \$500 settlement with a corporation that spent prohibited funds on an express advocacy radio
8 advertisement that failed to include a disclaimer, where the advertisement aired fourteen times
9 and cost \$225).

10 C. Palestine Media Watch

11 1. Summary of Allegations and Response

12 The complaint alleged that PMW violated the prohibition on corporate contributions or
13 expenditures at 2 U.S.C. § 441b and that it violated the Act's disclaimer requirements at 2 U.S.C.
14 § 441d. The complaint also alleged that, "in the event these expenditures" were not coordinated
15 with the Hilliard campaign, "PMW has also failed to properly report such expenditures in
16 violation of 2 U.S.C. § 434(c)."

17 PMW's response does not acknowledge or otherwise provide any information about
18 its corporate status. However, Delaware corporation records indicate that an entity called
19 "Palestine Media Watch" registered as a corporation in that state on November 30, 2001.⁸

⁷ Moreover, it is possible that AMC's e-mail communication would not require a disclaimer under BCRA, since the new disclaimer regulation applies only to, *inter alia*, "unsolicited electronic mail of more than 500 substantially similar communications" See new 11 C.F.R. § 110.11(a). Also, it appears likely that the costs involved did not exceed the Act's \$250 reporting threshold for independent expenditures. See 2 U.S.C. § 434(c) (the complaint did not allege that AMC violated any of the Act's reporting provisions).

⁸ A Dun & Bradstreet search provided no information about Palestine Media Watch or any similarly named entity.

1 The response described PMW as "an all-volunteer organization." PMW's website indicates
2 that PMW was started in October 2000, identifies Ahmed Bouzid as its president,
3 and states that its purpose "is to fight anti-Palestinian bias in the U.S. media." See
4 <www.pmwatch.org/pmw/more.html>. The website allows the Internet visitor to become a
5 member of PMW by making a donation to the organization: "Please pitch in with whatever you
6 can by either donating on-line . . . by participating in [an] affiliate program . . . or by sending in a
7 donation to the [listed] address" <www.pmwatch.org/pmw/donations>. The website notes
8 that financial support is used to "help us defray our web-hosting fees, our printing and copying
9 costs, and various other little expenses" *Id.* Although the website does not include
10 membership data, a recent news article stated that PMW "now has chapters in 36 American
11 cities." *Associated Press Newswires*, September 18, 2002.

12 The complaint described PMW as "a corporation . . . that established, maintains and
13 controls" the website <www.pmwatch.org>. The complaint alleged that, "[a]s of June 20, 2002
14 [five days before the election], upon accessing the PMW website, one is greeted with a message
15 stating 'Congressman Hilliard Needs Your Support.'" Attached to the complaint are four pages
16 from the PMW website, each dated June 21, 2002, which contain the aforementioned message
17 along with a photograph of Earl Hilliard's face positioned next to a picture of the seal of the
18 "U.S. House of Representatives." Complainant alleges that the message was linked to another
19 website, <www.voteHilliard.org>.⁹

20 The complaint included seven pages of material (mostly news articles) from the latter
21 website, which describe in detail the race between Hilliard and his challenger, focusing on the

⁹ A registration search for <www.votehilliard.org> identified PMW as the domain registrant and Bouzid as the administrative contact. See <www.register.com>. In contrast, the Hilliard committee is listed as the domain registrant for the website <www.votehilliard.com>. *Id.* This Office notes that the requirements and restrictions concerning the use of a candidate's name at 11 C.F.R. § 102.14(a) apply only to political committees.

1 candidates' views on Middle East policy. Complainant alleged that, "[i]n addition to urging
2 viewers of its site to 'support,' 'donate,' and 'contribute' to Congressman Hilliard," the website
3 "provides the campaign address . . . and makes suggestions for specific contributions [\$100,
4 \$200, \$500 or \$1,000] to Hilliard's campaign." The complaint included a solicitation page from
5 the website with the header "Donate to Re. Hilliard's campaign." The page notes that the
6 contributor "must be a U.S. citizen or legal resident," that corporate contributions are prohibited,
7 that contributions are not tax-deductible, and that the contributor's name, address, telephone
8 number, occupation and employer information are required. The following notice is displayed at
9 the bottom of the page: "voteHilliard is NOT affiliated with the Hilliard for Congress
10 Campaign."

11 PMW's response stated that "anyone visiting the voteHilliard pages can easily determine
12 from the explicit URL web link that the voteHilliard pages were an integral part of' PMW's
13 website. The response asserted that, "[a]s proof that visitors were able to easily determine that
14 the page was hosted by pmwatch.org," a reporter from Alabama contacted PMW "seeking
15 comments" about the Hilliard race. The response contended that the "voteHilliard pages were
16 designed, developed, and published in-house by PMWatch members, and no monetary
17 compensations were made." The response concluded that PMW has made "no expenditures" to
18 develop the web pages and hence made no contributions to the Hilliard campaign.

19 2. Analysis

20 By using the website address "voteHilliard" and by soliciting contributions for the
21 Hilliard campaign, PMW expressly advocated the election of a clearly identified federal
22 candidate, Earl Hilliard. See 11 C.F.R. § 100.22(a) and *supra* n. 2. Further, by noting the
23 availability of the website to visitors such as a reporter from Alabama, the response appears to

1 acknowledge that the website material was accessible to the general public during the period in
2 question. Because there are no apparent statutory or regulatory exceptions available to PMW,
3 and because there is no information suggesting that PMW coordinated its activity with the
4 Hilliard committee (*see infra* discussion of Hilliard committee response), these communications
5 to non-members appear to have constituted prohibited corporate expenditures.¹⁰ *See* 2 U.S.C.
6 § 441b. Although the response stated that the web pages were designed, developed and
7 published by volunteers, PMW's website indicates that there may have been non-labor costs
8 involved, such as web-hosting fees, which we believe should be viewed as inseparable from the
9 campaign communications posted on the site. In addition, pursuant to the law in effect at the
10 time of the activity, the website communications were required to state who paid for them and
11 that they were not authorized by any candidate or candidate's committee. *See* 2 U.S.C.
12 § 441d(a)(3). The notice at the bottom of PMW's solicitation – "voteHilliard is NOT affiliated
13 with the Hilliard for Congress Campaign" – does not appear to meet these requirements.
14 Accordingly, this Office recommends that the Commission find reason to believe that Palestine
15 Media Watch violated 2 U.S.C. §§ 441b and 441d.

16 As noted, the complaint also alleged that PMW violated 2 U.S.C. § 434(c) by failing to
17 report the costs of the express advocacy communications as an independent expenditure.
18 However, the costs associated with communication were likely insufficient to trigger section
19 434(c)'s \$250 threshold, based on the available information concerning the "voteHilliard.org"
20 domain name and hosting fees (and crediting PMW's claim that it used volunteers to create the

¹⁰ Although certain nonprofit corporations may make independent expenditures, PMW has not claimed to be such a corporation. *See* 11 C.F.R. § 114.10.

1 communications).¹¹ Accordingly, this Office recommends that the Commission find no reason to
2 believe that Palestine Media Watch violated 2 U.S.C. § 434(c).

3 In view of the likely minimal costs associated with PMW's corporate website activities,
4 which would serve as the basis for a civil penalty, as a matter of prosecutorial discretion this
5 Office recommends that the Commission take no further action against Palestine Media Watch,
6 and send an admonishment letter.¹² See MURs 5147, 4957 and 5048, cited *supra*. Further,
7 although the websites themselves were named as respondents, the available information indicates
8 they were paid for and maintained by PMW. Accordingly, this Office recommends that the
9 Commission take no action with respect to www.pmwwatch.org and www.voteHilliard.org.

10 **D. Hilliard committee**

11 Although the complaint did not include any specific allegations against the Hilliard
12 committee, the information contained therein suggested that it was the main beneficiary of the
13 other respondents' campaign activities. The Hilliard committee asserted that it was never
14 contacted by AMC or PMW "in reference to the placing of the advertisements regarding
15 Congressman Hilliard's campaign on the internet or in any format for the media." The
16 committee also claimed that it was not made aware of the contents of the advertisements "prior
17 to their being placed," and it did not consent to the placing of them. The committee specifically
18 denied that it is or was affiliated with "voteHilliard.org" and claimed that it has no knowledge

¹¹ Although there is insufficient information to conduct a thorough analysis of the cost or value of PMW's communications, this Office's research shows that domain names can be purchased for as little as \$35 and that web-hosting fees for several web pages may cost as little as \$129/year. See <www.netsol.com>. According to <www.register.com>, PMW registered the "votehilliard.org" domain name for one year starting on May 20, 2002 (the run-off election at issue occurred on June 25, 2002).

¹² Further, under BCRA there would appear to be no basis for a violation of 2 U.S.C. § 441d. Under the Commission's new disclaimer rules at 11 C.F.R. § 110.11, the communications at issue would not require disclaimers because "public communications" include only "Internet websites of *political committees* available to the general public" (emphasis added).

1 about who paid for the advertisements. Finally, the Hilliard committee asserted that "[a]ny
2 solicitation or expenditures of funds by either" AMC or PMW "were made without the
3 cooperation, prior consent of, in consultation with, or at the request or suggestion of" the
4 campaign.¹³

5 Because there is no allegation or other information suggesting that the Hilliard committee
6 was aware of the communications at issue or was affiliated in any manner with the website
7 "voteHilliard.org," this Office recommends that the Commission find no reason to believe that
8 the Hilliard for Congress Campaign and Elvira W. Williams, as treasurer, violated any provision
9 of the Act or Commission regulations in this matter.

10 Finally, because the recommendations in this Report dispose of all the named
11 respondents, this Office recommends that the Commission close the file in this matter.

12 **III. RECOMMENDATIONS**

- 13 1. Find reason to believe that the American Muslim Council violated 2 U.S.C.
14 §§ 441b and 441d.
- 15 2. Take no further action against the American Muslim Council and send a letter of
16 admonishment.
- 17 3. Find reason to believe that Palestine Media Watch violated 2 U.S.C. §§ 441b and
18 441d.
- 19 4. Find no reason to believe that Palestine Media Watch violated 2 U.S.C. § 434(c).
- 20 5. Take no further action against Palestine Media Watch and send a letter of
21 admonishment.
- 22 6. Take no action with respect to www.pmwatch.org and www.voteHilliard.org.
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¹³ If PMW's public communications were coordinated with the Hilliard committee, the related expenditures presumably would be treated as in-kind corporate contributions received by the Hilliard committee in violation of 2 U.S.C. § 441b.

7. Find no reason to believe that the Hilliard for Congress Campaign and Elvira W. Williams, as treasurer, violated any provision of the Act or Commission regulations in this matter.

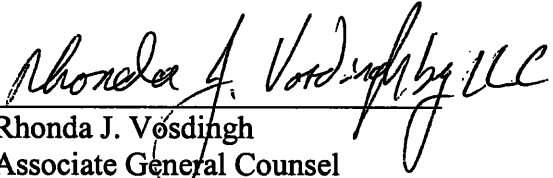
8. Close the file.

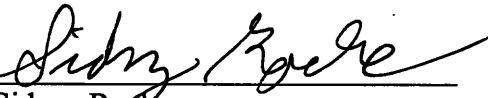
Lawrence H. Norton
General Counsel

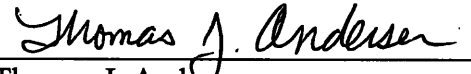
Date

2/13/04

BY:


Rhonda J. Vording
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